counsel"; it is "a matter of great business hazard and risk to counsel when done upon purely contingent fees." And in many cases, it is further urged, no other than contingent fees are possible and to deny them is practically to deny the right to counsel. Mr. Justice Miller is quoted from, in *Taylor* v. *Bemiss*, 110 U. S. 42, in illustration of such result and its injury.

The right to counsel being thus recognized, and recognized antecedently to the contract now involved, it became, counsel contend, a "pre-existing valid right," and to take it away is to divest the right—to take it away is to deprive of property of value assured of protection by the Constitution of the United States. To sustain the contentions a number of state cases are cited. Among them is *Black* v. *O'Hara, Admr.*, 175 Kentucky, 623, the case which the Court of Appeals regarded as authority for its ruling in the present case.

In a general sense there is force and much appeal in the contentions, but we think they carry us into considerations beyond our cognizance. Liberty in any of its exertions and its protection by the Constitution are of concern. The right to bind by contract and require performance of the contract are examples of that liberty and that protection and they might have resistless force against any interfering or impairing legislation if the contest in the case was simply one between Calhoun and the Arnold estate. But there are other elements to be considered—there is the element of the condition Congress imposed on the subject-matter of the controversy regarded as a condition of its grant. Relief could only be had through legislation. This was petitioned and the Senate of the United States was prompted to refer the claim to the Court of Claims. A defect of remedy remained even after the court had been thus invoked and had reported the amount and facts of the claim. Further legislation was necessary, but it could not have been compelled; it

was optional, not compulsory; and it would seem to require no argument to convince that the terms of its enactment must be taken as expressed and the relief it granted accepted with the condition imposed upon it. Indeed, the proposition is confused by its discussion. And it is certainly difficult to deal with the distinction that counsel make between preëxisting and prospective transactions. The right is absolute and universal and necessarily must be to have any strength at all. It is only arbitrary in the sense that many of the faculties of government are. And we have seen there was exertion of one of its powers in the present case—not, however, to interfere with or lessen the asserted obligation of the contract between Arnold and Calhoun, but to limit only the application of the money gratuitously appropriated in the payment of attorneys' fees. The contention is that this cannot be done, or, to put it another way, that the appropriation, though it could not be compelled, was yet subservient to the contract of Calhoun (and, we may interject, if for 50%, for any per cent. or terms) and that he was entitled to all the contract provided, denuded of the condition imposed upon the appropriation.

The contention has no legal basis, and it may be said it has no equitable one. Neither the justice nor the policy of what sovereignty may do or omit to do can be judged from partial views or particular instances. It is easy to conceive what difficulties beset and what circumstances had to be considered in legislating upon such claims. Definite dispositions were matters of reflection and, it may be, experience—imposition was to be protected against as well as just claims provided for, and, considering claimants and their attorneys in the circumstances, it may have seemed to Congress that the limitation imposed was fully justified, that 20% of the amounts appropriated would be a proper adjustment between them. We are not concerned, however, to accuse or defend. Whatever might have been

the moving considerations, the power exercised must be sustained. *Frisbie* v. *United States*, 157 U. S. 160; *Ball* v. *Halsell*, 161 U. S. 72.

The first case dealt with conditions upon pension legislation; the second concerned a claim against the United States on account of Indian depredations. It is, therefore, contended that they are unlike Calhoun's contract with Arnold and that their principle is not applicable. We think otherwise. The legislation passed on was sustained as within the power of government.

We conclude, therefore, that Calhoun's claim for a balance due as fees cannot be paid out of the moneys appropriated by Congress and now in the hands of the administrator *de bonis non*, or recognized as having any validity as against that fund. Beyond this we need not go.

Judgment reversed and cause remanded for further proceedings not inconsistent with this opinion.

MR. JUSTICE HOLMES concurs in the result.

MR. JUSTICE MCREYNOLDS took no part in the decision.